

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

**DAVID GILLERLAIN
dba AFFORDABLE MOVING,**

Respondent.

**Docket No. FMCSA-2009-0034¹
(Eastern Service Center)**

AMENDED ORDER ON BINDING ARBITRATION

An Order on Binding Arbitration was issued for this matter on June 3, 2009, and served on June 8, 2009. The NOC had charged Respondent with: (a) one violation of 49 CFR 375.211(a), with a proposed civil penalty of \$1,100, for failing to participate in an arbitration program; (b) one violation of 49 CFR 375.215, with a proposed civil penalty of \$1,100, for failing to charge the applicable tariff rate; (c) one violation of 49 CFR 382.115(a), with a proposed civil penalty of \$2,000, for failing to implement an alcohol and/or controlled substances testing program; and (d) one violation of 49 CFR 392.9a(a)/14901(d)², with a proposed civil penalty of \$25,000, for operating a motor vehicle providing transportation requiring operating authority without the required operating authority. The Order denied the request for binding arbitration on the amount of the civil penalty for the fourth charge, and found as follows:

Under 49 USC § 14901(d)(3), the minimum civil penalty for a person operating as a motor carrier of HHG in violation of the registration requirements of 49 USC Chapter 139 is \$25,000. An arbitrator would not have any authority to set the civil penalty at an amount lower than this statutory minimum. Further, FMCSA's published guidance on arbitration does not permit the arbitrator to impose a civil penalty higher than the penalty proposed in

¹ The prior case number of this matter was NH-2008-0067-US0865.

² The correct cite is 49 CFR 392.9a(a)/49 U.S.C. § 14901(d).

the NOC, which in this case is also \$25,000. Thus, an arbitrator could only set the amount of the penalty at \$25,000, and sending the case to arbitration on this issue would serve no useful purpose. The arbitrator, however, may set the terms of payment for the fourth charge.³

The Order, however, found that the civil penalty for the three remaining charges may be arbitrated. That finding is incorrect. The first two charges are subject to statutory minimum civil penalties of \$1,000 each pursuant to 49 U.S.C. § 14901(d)(1). This amount has been increased for inflation to \$1,100 in Appendix B to 49 CFR Part 386, paragraph (g)(7). Therefore, only the civil penalty for the third charge - one violation of 49 CFR 382.115(a), with a proposed civil penalty of \$2,000, for failing to implement an alcohol and/or controlled substances testing program – an alleged violation of the Federal Motor Carrier Safety Regulations (FMCSRs), not the Federal Motor Carrier Commercial Regulations (FMCCRs),⁴ may be arbitrated. Accordingly, the request for binding arbitration of the civil penalty for the first, second, and fourth charges is denied. The request for binding arbitration of the amount of time in which to pay the civil penalty stemming from all four charges is granted.⁵

It Is So Ordered.



Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration

6-10-09
Date

³ See *In the Matter of James Broderick dba Broderick Moving & Storage*, Docket No. FMCSA-2007-0080, Order on Request for Binding Arbitration, December 19, 2007.

⁴ The Order on Binding Arbitration mistakenly stated that all four charges pertained to the FMCCRs.

⁵ Given that only \$2,000 out of a total civil penalty of \$29,200 may be arbitrated, the parties may wish to discuss settlement of the \$2,000 amount and a payment plan for the entire amount before the case goes to arbitration.

CERTIFICATE OF SERVICE

This is to certify that on this 11 day of June, 2009, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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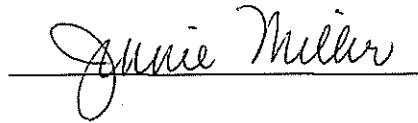
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A handwritten signature in cursive script, reading "Janie Miller", is written over a horizontal line.